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Nos. 00-652 & 00-629

Supreme Court, U.S.
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In The

Supreme Court of the United States

SEA HUNT, INC.,

Petitioner,

v.

SPAIN,

Respondent,

and

COMMONWEALTH OF VIRGINIA,

Petitioner,

v.

SPAIN,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF OF THE AMICI CURIAE PROFESSIONAL SHIPWRECK EXPLORERS ASSOCIATION, HISTORIC SHIPWRECK SALVAGE POLITICAL ADVISORY COMMITTEE, MEL FISHER ENTERPRISES, OLD WORLD SEARCH & RECOVERY, INC., SOUTHLAND MARINE, INC., COBB COIN COMPANY, INC., INTERSAL, INC., ENTERPRISE MARINE SERVICES, INC., QUICKSILVER INTERNATIONAL, INC., DEEP SEA RESEARCH, INC., AND LADY ELGIN FOUNDATION IN SUPPORT OF THE PETITION

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34 pp

TABLE OF CONTENTS

I. STATEMENT OF INTEREST OF *AMICI CURIAE* 1

II. SUMMARY OF ARGUMENT 2

ARGUMENT

III. THE FOURTH CIRCUIT'S DECISION DESTROYS THE UNIFORMITY OF ADMIRALTY LAW AS ESTABLISHED BY THIS COURT IN *DEEP SEA RESEARCH* 3

IV. SPAIN CANNOT ASSERT OWNERSHIP OF UNIDENTIFIED SHIPWRECK SITES 7

V. THE FOURTH CIRCUIT'S UNIQUE TEST FOR ABANDONMENT IMPERILS THE UNIFORMITY OF U.S. ADMIRALTY LAW 12

VI. CONCLUSION 17

APPENDICES

APPENDIX A. DESCRIPTION OF *AMICI CURIAE* 1a

APPENDIX B. ORDER FOR FINAL JUDGMENT: STATE OF RHODE ISLAND V. UNIDENTIFIED, ETC. VESSELS 7a

APPENDIX C. SPANISH AMBASSADOR'S LETTER DISAVOWING OWNERSHIP OF SHIPWRECKED WARSHIPS 11a

TABLE OF AUTHORITIES

CASES

Bemis v. RMS LUSITANIA,
884 F.Supp. 1042, 1049 (E.D. Va. 1995)..... 16

California v. Deep Sea Research, Inc.
523 U.S. 491 (1998)..... *passim*

Cobb Coin Co., Inc. v. Unidentified etc. Vessel,
525 F.Supp. 186 (S.D. Fla. 1981)..... 13

Columbus-America Discovery Group v. Atlantic Mutual Ins., Co., et al., 974 F.2d 450 (4th Cir. 1992)
....3, 11

Deklyn v. David, 1 Hopk. Ch. 154 (N.Y. Ch. 1824)
..... 14

Fairport International Exploration, Inc. v. The CAPTAIN LAWRENCE, 72 F.Supp.2d 795, (W.D.MI 1999)..... 16

International Aircraft Recovery, LLC v. Unidentified, etc. Aircraft, 54 F.Supp. 2d 1172 (S.D. Fla. 1999)..... 4

International Aircraft Recovery, LLC v. Unidentified, etc. Aircraft, 218 F.3d 1255 (11th Cir 2000) 2, 5, 9

Jupiter Wreck, Inc. v. Unidentified, etc. Vessel ,
691 F.Supp. 1377 (S.D. Fla. 1988)..... ..6, 13

TABLE OF AUTHORITIES – continued

Klein V. Unidentified, etc. Vessel, 785 F.2d 1511 (11th Cir. 1985) 6

Lathrop v. Unidentified Vessel, 817 F.Supp. 953, 965 (M.D.Fla. 1993) 6, 14

Lopez Soba v. Fitzgerald, 1993 A.M.C. 120 (P.R. 1992) 14

Marx v. Government of Guam, 866 F.2d 294 (9th Cir. 1988) 13

MDM Salvage v. Unidentified, etc. Wreck, 631 F.Supp. 308 (S.D. Fla. 1986) 13

Platoro v. Unidentified Remains, 614 F.2d 1051 (5th Cir. 1980) 6, 13

Quicksilver International, Inc. v. Unidentified, etc. Vessel, C.A. No. 88-618 (E.D. Va.) 4a

RMS Titanic, Inc. v. Haver, 171 F.3d 943 (4th Cir. 1999) 6

Sea Hunt v. Unidentified Shipwrecked Vessel(s), 47 F.Supp.2d 678 (E.D.Va. 1999) 5a

Sea Hunt v. Unidentified Shipwrecked Vessel(s), 1999 U.S. Dist. LEXIS 21752 (E.D. Va. 1999) 5

Sea Hunt v. Unidentified Shipwrecked Vessel(s), 221 F.3d 634 (4th Cir. 2000) ..... *passim*

TABLE OF AUTHORITIES – continued

Sea Services of the Florida Keys, Inc.v. State of Florida, 156 F.3d 1151 (11th Cir. 1998) 5

Sindia Expedition, Inc., v. the SINDIA, 895 F.2d 116 (3d Cir. 1990) 16

State of Rhode Island v. Unidentified, etc. Vessels, C.A. No. 99-136T (D.R.I. Dec. 1, 2000) 14

Subacqueous Exploration & Archaeology Inc. v. Unidentified Vessel, 557 F.Supp. 597 (D.Md. 1983) 14, 15

Sub-Sal, Inc. v. HMS DEBRAAK, C.A. No. 84-296-CMW (D.Del. 1992) 14

Treasure Salvors v. Jordan, 556 F.Supp. 1319 (S.D. Fla. 1983) 13

Treasure Salvors, Inc. v. Unidentified etc., Vessel, 569 F.2d 330 (5th Cir. 1978) 13

Treasure Salvors, Inc. v. Unidentified, etc.Vessel, 549 F.Supp. 919 (S.D.Fla. 1981) 10

Wiggins v. 1100 Tons of Italian Marble, 186 F.Supp. 452 (E.D.Va. 1960) 16

STATUTES

The Abandoned Shipwreck Act of 1987, 43 U.S.C. §§2101, *et seq.* 14

I. STATEMENT OF INTEREST OF *AMICI CURIAE*[1]

Amici curiae are professional companies and/or organizations engaged in the search for and recovery of historic shipwrecks and their cargo. The unprecedented Fourth Circuit Court of Appeals decision--deciding title prior to determining salvage rights, recognizing Spanish ownership of the long-lost shipwrecks, *LA GALGA* and *JUNO*, and permitting a sovereign not in actual possession thereof to prohibit their salvage--destroys the uniformity of admiralty law as unanimously established by this Court in *California v. Deep Sea Research, Inc.*, 523 U.S. 491 (1998) (*"DSR"*).

Amici urge the Supreme Court to grant *Certiorari* as they have a vested interest in the predictability and uniformity of admiralty law and in the protection of the traditional--indeed, ancient--freedom of the seas to search for and rescue lost property from marine peril. A more

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[1] Pursuant to Supreme Court Rule 37.6, this brief was entirely written and paid for by *amici* and/or its counsel. Pursuant to Rule 37.3(a), *amici* have obtained the written consent of the parties for permission to file this brief.

detailed description of the individual *amici* is set forth in Appendix A.

II. SUMMARY OF ARGUMENT

Two years ago, in *DSR, supra.*, this Court established uniformity in this contentious realm of admiralty law, ruling unanimously that a sovereign--including the King of Spain--that did not have actual possession of a wreck site could not interfere with the finder's right to salvage it. 523 U.S. at 496-8. *DSR* clearly and unequivocally established that the first issue to be addressed in such litigation is the question of salvage rights. It is only after the completion of recovery operations that title to the shipwreck and its cargo--i.e., abandonment--is to be addressed. *Id.*

The decision below by the Fourth Circuit--and a nearly identical one by the Eleventh Circuit in *International Aircraft Recovery, LLC v. Wrecked and Abandonded Aircraft*, 218 F.3d 1255 (11th Cir. 2000), *Cert. pending*, No. 00-617--turns the unanimous *DSR* precedent on its

head, destroying the essential uniformity of admiralty law while thumbing its nose at the Supreme Court.

The very fact that four (4) separate petitions for *certiorari* have been filed this term on this very issue[2] demonstrates the importance of granting the instant petition and in no uncertain terms, reaffirming the uniformity of federal admiralty law as set forth by this Court in *DSR*.

ARGUMENT

III. THE FOURTH CIRCUIT'S DECISION DESTROYS THE UNIFORMITY OF ADMIRALTY LAW AS ESTABLISHED BY THIS COURT IN *DEEP SEA RESEARCH*

In *DSR*, an unanimous Supreme Court swept away a decade of confusing precedent in reaffirming a venerable, bright-line rule: where the property is *not in the actual possession* of the sovereign, that sovereign--be it a U.S. state, the federal government or U.S. Navy, or even a foreign nation like Spain--cannot interfere with the salvor's *in rem* salvage action. *DSR, Id.*

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[2] The other petitions, for which *certiorari* has been denied, are *Columbus-America Discovery Group, Inc. v. Atlantic Mutual Ins. Co., et al.*, No. 99-1935, *Cert. den.* 121 S.Ct. 277 and *Yukon Recovery, LLC v. Ocean Mar, Inc.* , No. 99-1958, *Cert. den.* 121 S.Ct. 62.

In contravention of this Court's clear rule, two appellate courts have each since permitted a sovereign claimant *without actual possession* of the wrecksite to enjoin the salvor in possession from carrying forward its recovery operations. In *International Aircraft Recovery, LLC v. Unidentified, etc. Aircraft*, 54 F.Supp.2d 1172 (S.D.Fla. 1999), the district court had found that the even if the United States Navy were still the owner of a rare World War II torpedo bomber found in international waters, it could not refuse its salvage: "[N]umerous cases hold that an owner may not refuse salvage services if no other provisions for rescue has been made and marine peril exists." *Id.* at 1179. More fundamentally, the district court noted that in light of *DSR*, it could not be disputed that "...the issue of abandonment and ownership are secondary to the question of whether this Court can protect the Plaintiff's ongoing federal salvage rights." *Id.* at 1179.

In reversing the district court, the Eleventh Circuit ignored any analysis of this Court's *DSR* decision, summarily dismissing the issue of sovereign possession

because it was not an Abandoned Shipwreck Act ("ASA") case!*Int'l Aircraft*, 218 F.3d at 1260. *But see, Sea Services of the Florida Keys, Inc. v. State of Florida*, 156 F.3d 1151, 1153 (11th Cir. 1998) [Florida cannot interfere with salvor's possession].

Of course, this Court's analysis made no such distinction: the rule applies to *any* claim asserted by *any* sovereign *without actual possession* of the property whose salvage is at issue. *DSR*, *supra.* at 496-8. It is undisputed that neither *LA GALGA* nor *JUNO* have been in the possession of Spain for well over two centuries. Nevertheless--without citing or in any way distinguishing *DSR*--the Fourth Circuit allowed Spain to refuse salvage and allowed no salvage award. *Sea Hunt*, 221 F.3d at 647-648. This is plain error.

The district court had also ruled that a non-possessing sovereign could refuse salvage--but cited cases finding abandonment of Spanish shipwrecks! *Sea Hunt*, 1999 U.S. Dist. LEXIS 21752 (E.D.Va. 1999). In each of

these cases[3] the owner was the state or federal government in whose submerged lands an *abandoned* Spanish shipwreck had been found. But this supports Virginia's and Sea Hunt's position that Spanish shipwrecks off the coast of North America have been abandoned. The cases *do not* support Spain's assertion that it can reject Sea Hunt's salvage of *LA GALGA* and *JUNO* where Spain: 1) does not possess them; 2) does not know where the shipwrecks are (like California in *DSR*); and, 3) has neither the wherewithal nor intent to rescue their remnants from the marine peril in which Sea Hunt has discovered them.

Ironically, only a year before its *Sea Hunt* decision, the Fourth Circuit ruled that, [T]he law of salvage presumes that the owner desires the salvage service." *RMS Titanic, Inc. v. Haver*, 171 F.3d 943, 963 (4th Cir. 1999). Presumptions notwithstanding, this Court has made it clear that irrespective of the King of Spain's desires, he cannot

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[3] *See, Platoro,* 695 F.2d 893, 901 (5th Cir. 1983); *Lathrop v. Unidentified, etc. Vessel.* 817 F.Supp. 953, 964 (MD Fla. 1993); *Klein v. Unidentified Vessel,* 758 F.2d 1511, 1515 (11th Cir 1985); *Jupiter Wreck, Inc v. Unidentified Vessel,* 691 F.Supp. 1377, 1389 (SD Fla 1988).

unilaterally enjoin the salvage of the shipwreck sites that Sea Hunt has discovered and has maintained in its exclusive possession. *DSR*, 523 at 496-8.

IV. SPAIN CANNOT ASSERT OWNERSHIP OF UNIDENTIFIED SHIPWRECK SITES

Like *DSR, supra.* at 1469, *Sea Hunt* comes before the Court with a sparse, almost nonexistent record: there had been no discovery, no evidentiary hearings were held, and almost no testimony whatsoever was taken or otherwise a basis for the decision.

Although *DSR* was ultimately remanded to the district court to address the ultimate issue of the shipwreck's abandonment, the preliminary issue of salvage rights was fully adjudicated by the Court. In *Sea Hunt,* on the other hand, non-abandonment by Spain was found and the salvor in possession ordered not to knowingly disturb Spain's property (wherever that might be). 221 F.3d at 647.

Amici are troubled by the "rush to judgment" nature of the *Sea Hunt* litigation. Having disposed of the issue of the abandonment of *LA GALGA* pursuant to the 1763 Treaty between Great Britain and Spain, *Sea Hunt,* 17 F.Supp.2d at 688-690, the case was then set for further briefing on the question of Sea Hunt's salvage rights and the award due it with respect to the discovery of *JUNO*. But the court did not convene any hearing to assess the quantum of the salvage award due. Nor was any testimony taken as to the identity and physical parameters of the wreck site. Indeed, what little testimony of record there is on *JUNO* comes from Sea Hunt President Benson's statements made at the *ex parte* admiralty arrest hearing on March 11, 1998 (J.A. at 69-75, 82) and again briefly during a September 15, 1998 hearing. Nevertheless, the evidence established that Sea Hunt had spent two years and over one million dollars using overseas archival researchers, archaeological consultants and state of the art technology in the search for and preliminary identification of wreck sites believed to be *LA GALGA* and *JUNO*.

The few artifacts recovered from the *JUNO* site include an encrusted anchor, a corroded cannon, and several conglomerates that have yielded an assortment of objects, including several Spanish silver coins, none of which postdate the 1802 sinking of *JUNO*. This paucity of evidence cannot support a conclusive finding that either *LA GALGA* or *JUNO* has been discovered. Nevertheless, the Fourth Circuit affirmed a zero percent (0%) salvage award without comment.[4] 221 F.3d at 647-8.

This is hardly the sort of evidence necessary to substantiate a claim of discovery of a particular historic shipwreck. The district court was not satisfied that the Spanish treasure galleon *ATOCHA* had been discovered without reviewing the results of decades of onsite searching and diving, the recovery of literally tens of thousands of artifacts, and ultimately, the matching of several of those

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[4] This is yet another example of the lack of uniformity mischief that ensues when Circuit Courts fail to follow Supreme Court precedent: in *Int'l Aircraft Recovery, supra.*, 218F.3d at 1263-4, the Eleventh Circuit remanded for a salvage award adjudication under identical circumstances where the Fourth Circuit denied *any* salvage award for millions of dollars spent by Sea Hunt in locating (but not yet positively identifying) "Spanish" shipwrecks.

items with their description, serial number and weight as found on the ship's original cargo manifest. *Treasure Salvors, Inc. v. Unidentified, etc. Vessel*, 549 F.Supp. 919, 924-26 (S.D. Fla. 1981).

At best, Sea Hunt can only conclude that the wreck sites it has discovered are promising and may--at some time in the future--prove to be the long-lost Spanish frigates. For Spain to be satisfied that *JUNO* has been found at this preliminary juncture is even more mystifying. Spain has never had any divers visit either Sea Hunt site and has performed no archaeological research or examination of the artifacts recovered therefrom, either. In fact, Spain has no basis to assert, as it has, that Sea Hunt--as opposed to Quicksilver, Inc.--is the true finder of *JUNO*.

In *DSR, supra.* this Court established the procedures to be followed in adjudicating the salvage rights to an historic shipwreck. Inferior courts should not be permitted to bypass the initial question of salvage rights and then--in

the absence of any evidentiary hearing whatsoever--jump to a conclusion as to the identity of the shipwreck sites.

Moreover, the record is void of the evidence ordinarily compiled in assessing the salvage award due the finder. In *Columbus-America Discovery Group v. Atlantic Mutual Ins. Co., et al.*, 974 F.2d 450, 468-69, (4th Cir. 1992) (*"CADG"*), the Fourth Circuit remanded the case to the district court for a full evidentiary hearing on the quantum of the salvage award to be paid to the intrepid finders of the S.S. *CENTRAL AMERICA*. The Court noted that six ingredients of the salvage award come from *The BLACKWALL*, 77 U.S. (10 Wall.) 1, 13-4 (1869), and assess the salvor's labor and skill, the cost and difficulty of the operations, the degree of danger encountered, and the value of the property saved. There is virtually no testimony on record whatsoever as to any of these factors in the *Sea Hunt* litigation.

Following such an evidentiary hearing in *CADG*, the appellate court affirmed a salvage award to the plaintiff

salvor of 90% of the value of the insured shipments of gold recovered from the *CENTRAL AMERICA*. *CADG II*, 56 F.3d 556, 562 (4th Cir. 1995). Compare and contrast the voluminous record before both the district court and the Fourth Circuit which supported this unprecedented--but fully justified--salvage award with the utter lack of evidence to support its equally unprecedented salvage award of *zero* percent (0% (!)) granted to Sea Hunt.

At a minimum, if this Court is satisfied with Spain's conclusion that *JUNO* has been discovered by Sea Hunt, a remand for an full evidentiary hearing on the salvage award due Sea Hunt is required. Because it cannot be disputed that Spain does not have possession of the *JUNO* site, this salvage hearing cannot take place until Sea Hunt has completed its archaeological recovery operations.

V. THE FOURTH CIRCUIT'S UNIQUE TEST FOR ABANDONMENT IMPERILS THE UNIFORMITY OF U.S. ADMIRALTY LAW

With the sole exception of the decisions below in the instant litigation--U.S. admiralty courts have uniformly found that Spanish shipwrecks have long since been aban-

doned: "disposition of a wrecked vessel whose very location has been lost for centuries as though its owner were still in existence stretches the fiction to absurd lengths." *Treasure Salvors, Inc. v. Unidentified, etc. Vessel,* 569 F.2d 330, 337 (5th Cir. 1978)[1622 galleon *ATOCHA* abandoned]; *See also, Treasure Salvors v. Jordan,* 556 F.Supp. 1319, 1325 (S.D. Fla. 1983) [1622 galleon *MARGARITA* abandoned].

These contested cases finding abandonment of Spanish shipwrecks include: the 1554 Spanish fleet lost off Padre Island, Texas [*Platoro v. Unidentified Remains,* 614 F.2d 1051, 1055 (5th Cir. 1980)]; the 1690 Manila galleon *PILAR,* lost off Guam [*Marx v. Government of Guam,* 866 F.2d 294, 300 (9th Cir. 1988]; a late seventeenth century shipwreck wrecked off Jupiter Inlet, Florida [*Jupiter Wreck, supra.*]; the 1715 Plate Fleet off Florida's "Treasure Coast" [*Cobb Coin Co., Inc. v. Unidentified, etc. Vessel,* 525 F.Supp 186, 197 (S.D. Fla. 1981)]; the 1733 Fleet in Florida's Middle Keys [*MDM Salvage v. Unidentified, etc. Wreck,* 631 F.Supp. 308, 310 (S.D. Fla. 1986)]; three eighteenth century Spanish shipwrecks abandoned in

Maryland's territorial water--including *LA GALGA*! [*Subacqueous Exploration & Archeology, Inc. v. Unidentified Vessel*, 577 F.Supp. 597, 600 & n.2 (D.Md. 1983)]; an unidentified Spanish wreck from the 1770's discovered in Cape Canaveral National Seashore [*Lathrop, supra.* at 965]; and even an unidentified Spanish wreck of unknown vintage [*Lopez Soba v. Fitzgerald*, 1993 AMC 120 (P.R. 1992)].[5]

These judicial conclusions were not a surprise to Spain. Indeed, in 1965, its own U.S. Ambassador admitted that Spain had lost its claim to the shipwrecked 1715 fleet when it abandoned any attempt at recovery; now its ownership was strictly a matter of Florida law. J.A. 348, appended hereto at Appendix C.

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[5] British warships of similar vintage have uniform-ly been deemed abandoned. *See, Deklyn v. Davis*, 1 Hopk. Ch.154, 162 (N.Y. Ch. 1824) [1782 British frigate *HUSSAR* abandoned in New York's "Hell Gate"]; *Sub-Sal, Inc. v. HMS DEBRAAK*, C.A. No. 84-296-CMW (D.Del. 1992)[1798 British Brig-of-War HMS *DEBRAAK* abandoned off Cape Henlopen, DE]. And as recently as this month, the District of Rhode Island found an entire fleet of British warships sunk in Naragansett Bay to have been abandoned and thereby the property of Rhode Island pursuant to the Abandoned Shipwreck Act, 43 U.S.C. §2101 *et seq. State of Rhode Island v. Unidentified, etc Vessels*, C.A. No. 99-136T (D.R.I. Dec 1, 2000) [Appended hereto as Appendix B].

The Ambassador's reasoning is equally applicable to *LA GALGA*. Spain never asserted title to the sunken frigate when it was allegedly discovered off Ocean City, Maryland in *Subacqueous, supra*. Its Captain Houny returned to the wreck site, only to find "a late Storm having broke the Hull to Pieces" with its cargo of mahogany cast ashore and heavily salvaged by the locals. Houny recovered what he could from the wreck site; since further efforts were futile, the Spanish captain abandoned any attempt to salvage *LA GALGA*, thereby giving up any future claim by that sovereign to its shattered hull and cargo.

Title to *LA GALGA* need not turn upon modern interpretation of archaic treaty language, assessing the legal consequences of multiple wars and peaces between Spain and the United States, or even in judicial scrutiny of arcane arenas of international law. Admiralty law has always heretofore taken a common sense approach to the concept of abandonment: when the owner knows of the location of his property and has the technology reasonably at hand with which to recover it, but does not, it is considered to have been legally abandoned.

Thus, in *Fairport International Exploration, Inc. v The CAPTAIN LAWRENCE,* 72 F.Supp.2d 795, (W.D. MI 1999), a shipwreck dashed to pieces on an island was deemed abandoned--and hence, state property--after the owner made no salvage effort for decades. *See also, Wiggins v. 1100 Tons of Italian Marble,* 186 F.Supp. 452, 456 (E.D.Va.1960) [*CLYTHIA* abandoned after remaining visible but unsalvaged in Virginia surf zone]; *Sindia Expedition, Inc. v. The SINDIA,* 895 F2d 116, 117 (3d Cir. 1990) [Windjammer abandoned in surf zone]; *Moyer v. ANDREA DORIA,* 836 F.Supp. 1099 (D.N.J. 1993) [location of sunken Italian liner never lost; deemed abandoned by underwriters in face of indifference to persistent and successful salvage]; *Bemis v. RMS LUSITANIA,* 884 F.Supp. 1042, 1049 (E.D. Va. 1995) [same].

The unique test of abandonment below means that identically-situated property will be found abandoned everywhere except in the Fourth Circuit. This clearly frustrates both the intent of Congress in the ASA and the

underlying rationale for U.S. admiralty jurisdiction: the uniformity of maritime law.

V. CONCLUSION

For the foregoing reasons, Virginia's and Sea Hunt's Petitions for *Certiorari* should be GRANTED.

Respectfully submitted,

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APPENDIX A

DESCRIPTION OF *AMICI CURIAE*

The Professional Shipwreck Explorers Association ("ProSEA") and the Historic Shipwreck Salvage Political Advisory Committee ("HISSPAC") are organizations comprised of companies and individuals committed to protecting the right of private companies and persons to engage in the search for and responsible excavation and recovery of historic shipwrecks. ProSEA and HISSPAC have been active in the promulgation of international conventions and federal and state laws and regulations governing historic shipwrecks and the rights of finders and salvors thereto. These organizations see the uniformity of U.S. admiralty law and its recognition and protection of salvage rights as essential to the continued vitality of the emerging industry of historic shipwreck recovery.

Mel Fisher Enterprises is the Key West, Florida successor to the renowned Treasure Salvors, Inc., the company that single-handedly searched for, located and salvaged the lost *and abandoned* 1622 Spanish galleons

ATOCHA and *SANTA MARGARITA*--discovering the richest shipwrecks ever found while winning an epic legal battle over their ownership. The *Treasure Salvors* litigation established the bedrock of modern U.S. admiralty law governing historic shipwreck salvage while demonstrating the inherent flexibility of the venerable principles of salvage law to the recovery of shipwrecks of historic and archaeological significance. Mel Fisher Enterprises wants its hard-earned precedents protected for future generations of undersea explorers.

Old World Search & Recovery, Inc. and Southland Marine, Inc. are each sub-contractors to Mel Fisher Enterprises. Working under the protection of the United States District Court for the Southern District of Florida, these companies spent the 2000 salvage season conducting successful search and salvage operations on the *SANTA MARGARITA* site in the Florida Keys

Cobb Coin Company, Inc. is a sister corporation to Salvors, Inc. For decades, its vessels and divers have been

actively and successfully salvaging the *abandoned* shipwrecks of Spain's illfated 1715 Plate Fleet off the east central coast of Florida. Like *LA GALGA* and *JUNO* herein, the 1715 Fleet was lost in what has since become the territorial waters of the State of Florida. And like the Commonwealth of Virginia permits--pursuant to which Sea Hunt, Inc. searched for, discovered and began successful salvage operations on the Spanish frigate shipwrecks *JUNO* and *LA GALGA* at issue herein--Cobb Coin Co. has long conducted its own successful salvage operations in Florida waters under the authority of search and recovery permits issued by that state.

Similarly, both *amici* Intersal, Inc. and Enterprise Marine Services, Inc. have been granted exclusive search and recovery permits by the states of North Carolina and Alabama, respectively, to search for valuable Spanish shipwrecks believed lost in the coastal waters of those states. In fact, the target of Intersal's search efforts is the 1750 sister vessel to *LA GALGA, EL SALVADOR*. Intersal and Enterprise see the Fourth Circuit's open defiance of the

Supreme Court and its unprecedented finding of non-abandonment--and the even more astonishing salvage award of *zero* percent for Sea Hunt's discovery of a shipwrecks that may well prove to be the long-lost *JUNO* and *LA GALGA*--as presenting a clear and present danger to their own substantial investments of time and money into archival research, electronic sensing, permit negotiations and diving operations.

Ironically, Quicksilver International, Inc., a Virginia Beach-based salvage company, has also been searching for the *JUNO* and believes to have found the wreck far offshore of the purported location that Spain now asserts is the site of the sunken frigate. Quicksilver's own search and recovery efforts have been ongoing for more than a decade under the protection of the United States District Court for the Eastern District of Virginia in *Quicksilver International, Inc. v. Unidentified, etc. Vessel*, C.A. No. 88-618. In spite of Quicksilver's well-publicized claim of discovery of *JUNO*, the Spanish Embassy has expressed neither interest nor any opposition whatsoever to the claim

of discovery. *See, Sea Hunt v. Unidentified Shipwrecked Vessel(s)*, 47 F.Supp.2d 678, 683-84 (E.D.Va. 1999).

Deep Sea Research, Inc. ("DSR") is the successful finder and salvor-in-possession of the California Gold Rush shipwreck, S.S. *BROTHER JONATHAN*, a vessel whose celebrated precious cargo spawned a legal battle with California decided by this Court in 1998. DSR joins in this *amicus* brief to protect the hard-earned precedent it won from an unanimous Court: a sovereign claimant to a shipwreck without possession thereof cannot prevent or otherwise interfere with its salvage. *DSR, supra.*

The Lady Elgin Foundation is a not-for-profit foundation that won title to its namesake shipwreck, one of the Great Lakes' most historic. Through a public and private cooperative venture, the Foundation is conducting the archaeological study and careful recovery of portions of the *LADY ELGIN* shipwreck for eventual display and curation in the Chicago area. It, too, is committed to protecting the admiralty law precedent which enabled it to

successfully defend its right to explore and salvage the *LADY ELGIN*.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STATE OF RHODE ISLAND
Plaintiff

v. C.A. No. 99-136T

The Unidentified, Wrecked,
and Abandoned Vessels,
among which is believed to be
the Lord Sandwich which in turn,
is believed to have formerly have been
the **H.M.S. *ENDEAVOUR***, their apparel, tackle, furniture,
equipment, cargo, etc., located in Newport Harbor,
Defendants in rem

ORDER FOR FINAL JUDGMENT

This action having been commenced by the filing of a complaint within the admiralty and maritime jurisdiction of this Court and the concomitant issuance of warrant of symbolic Arrest of the Unidentified, Wrecked, and Abandoned Vessels, among which is believed to be the Lord Sandwich which, in turn, is believed to have formerly have been the H.M.S. Endeavour; and

The said wrecks having been duly taken into the Marshal's de jure constructive possession and then taken into de facto custody of a substitute guardian, the Rhode

Island Historic Preservation and Heritage Commission (an agency of the State of Rhode Island Historic Preservation and Heritage Commission (an agency of the State of Rhode Island), on April 6, 1999, and no defendants and/or potential claimants having come forward to plead, or to request an extension of time in which to do so, or in any way proceed in this action after the State of Rhode Island dutifully complied with the Supplemental Rules for Certain Admiralty and Maritime Claims Rule C(4); and

Rhode Island having received no answer within the time specified according to the Supplemental Rules for Certain Admiralty and Maritime Claims Rule C(6); and

Be is now over a year having passed since such notice has been given that there is no likelihood of any claimant to step forward and answer; and

The said Unidentified, Wrecked, and Abandoned Vessels, among which is believed to be the Lord Sandwich which, in turn, is believed to have formerly have been the H.M.S. Endeavour, their apparel, tackle, furniture, equipment cargo, etc., located in Newport Harbor having in fact been determined to be abandoned and qualifying under federal law through the Abandoned Shipwrecks Act 43 U.S.C. §§2101-2106 and through the Rhode Island Antiquities Act, R.I. General Laws §42-45, 1-4 to automatically give Rhode Island title to said wrecks, their

apparel, tackle, furniture, equipment cargo, etc. after title has passed into possession of the United States Government;

WHEREFORE BE IT HEREBY NOW THAT THIS HONORABLE COURT, does hereby

ORDER, ADJUDGE, AND DECREE Plaintiff, the State of Rhode Island, is the sole and only lawful, true, and right owner of the Unidentified, Wrecked, and Abandoned Vessels, among which is believed to be the Lord Sandwich which, in turn, is believed to have formerly have been the H.M.S. Endeavor, their apparel, tackle, furniture, equipment cargo, etc., located in Newport Harbor, and as such is entitled to an exclusive exercise of all proper and lawful rights, interests, and incidents of ownership in the said Unidentified Wrecked and Abandoned Vessels, their tackle, armament, apparel, cargo and other effects pertaining to them; and does hereby further

ORDER, ADJUDGE, AND DECREE that, save as may be expressly permitted and authorized by said plaintiff, the State of Rhode Island, which shall provide reasonable access to the public in accordance with the requirements of 43 U.S.C. §2103 (a), said defendants, and all future potential claimants of the world, shall cease and desist from entering, going upon, or in any other way exercising or attempting to exercise dominion over or control over the

said vessel the Unidentified, Wrecked, and Abandoned Vessels, among which is believed to be the Lord Sandwich which, in turn, is believed to have formerly have been the H.M.S. Endeavour, their apparel, tackle, furniture, equipment cargo, etc., located in Newport Harbor upon pain of contempt.

TO ENTER PER ORDER

12/1/00 _____
United States Dist. Judge

Presented by:

STATE OF RHODE ISLAND
By its Attorney General

SHELDON WHITEHOUSE
ATTORNEY GENERAL

Michael Rubin, Esq. #3656
Assistant Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400 Ext. 2294
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APPENDIX C

Note: this is the verbatim certified translation hereof, as appeared in the Joint Appendix filed before the Fourth Circuit Court of Appeals.

Washington, D.C.
January 11, 1965

THE AMBASSADOR OF SPAIN
WASHINGTON, DC
Number 3

Mr. D. Victor de Avenell
3345-14th Street
Vero Beach, FL 32960

Dear Sir:

Thank you for your kind letter of last December 20, which I read with extreme interest.

The legal question of the ownership of the treasure on the east coast of Florida can raise questions as to whether said state has rights to all or part of it, with or without compensation. I do not know what solution is found to this issue in the applicable law.

In any case, there is no doubt that the Spanish State may not claim any title to said treasure for the following reasons:

1) If the discovery is considered "marine salvage," the owner of the ship and/or merchandise would have lost all rights because he abandoned any attempt of recovery.

2) If the discovery is considered a discovery of a treasure in the territory (including the territorial waters) under the jurisdiction of a state, in this case the state of Florida, the laws of this state will determine title to the treasure.

In most cases extinctive prescription would act against any right possibly reclaimed by a previous owner.

Thank you again for your interest, and I remain.

Sincerely,

[signature]
Marquis de Morry del Val,
AMBASSADOR OF SPAIN